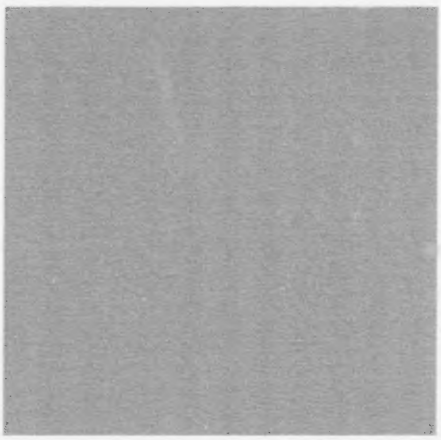
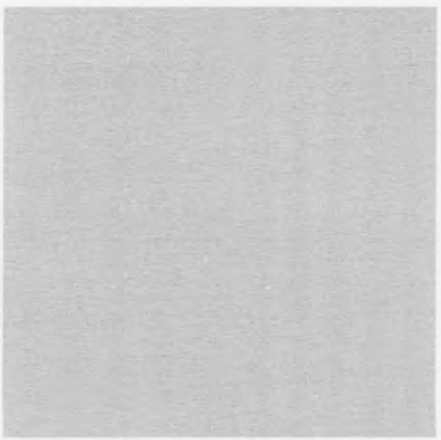
# ALBERTA OMBUDSMAN

*43rd Annual Report*

# *Focused on Fairness*





April 1, 2009 through March 31, 2010

ALBERTA OMBUDSMAN
*Focused on Fairness*

October 2010

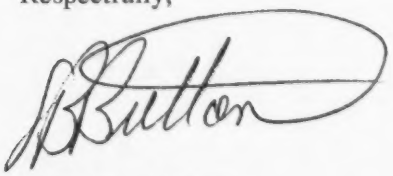
The Honourable Ken Kowalski
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, AB T5K 1E4

Dear Mr. Speaker:

The Office of the Ombudsman is pleased to present its 43rd Annual Report to you and through you, to the Legislative Assembly.

The Report has been prepared in accordance with Section 28(1) of the *Ombudsman Act* and covers the activities of the Office of the Ombudsman for the period April 1, 2009 through March 31, 2010.

Respectfully,



G. B. (Gord) Button
Alberta Ombudsman

# ALBERTA OMBUDSMAN

*Focused on Fairness*

## VISION, MISSION AND VALUES

# VISION

The Alberta Ombudsman is the recognized leader for independent investigation, promotion and support of administrative fairness.

# MISSION

The Alberta Ombudsman independently and impartially promotes high standards of administrative fairness through investigations, recommendations for change and education.

# VALUES

To obtain our Vision and deliver our Mission, our Values are fundamental to all our interactions and communications.

We Value:

Fairness
Competency
Respect
Integrity
Equity and
Confidentiality

We also value a working environment that fosters personal and professional growth and development, collaboration and teamwork, and innovation and creativity.

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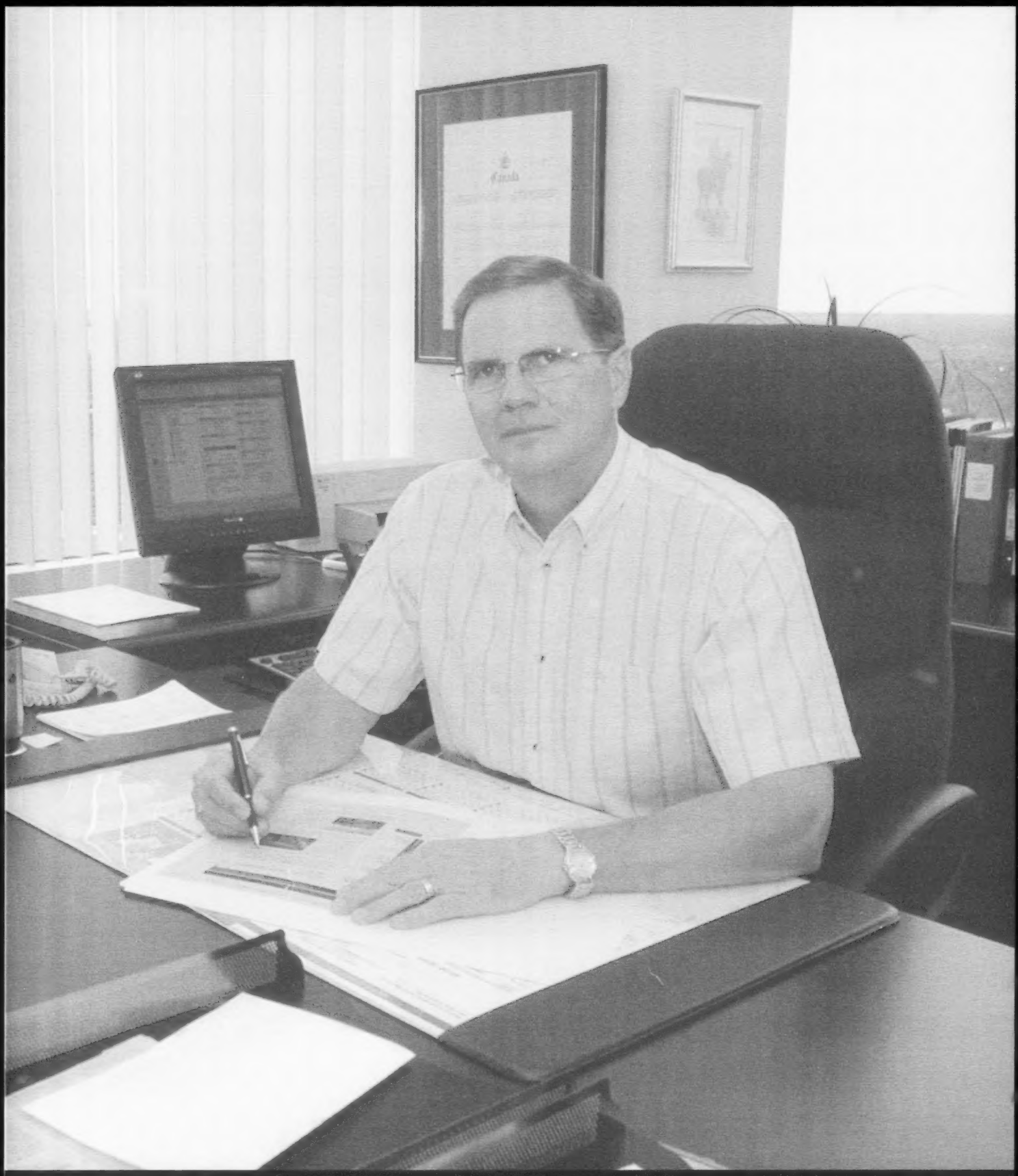


# MESSAGE FROM THE OMBUDSMAN

# MESSAGE FROM THE OMBUDSMAN

**Brenda Taylor**, Executive Director, Health Care Insurance Plan Administration, was forthright in discussing issues and areas in which Alberta Health and Wellness could increase administrative fairness in its dealings with Albertans.

## INTRODUCTION

It is that time of year again when, as an Officer of the Legislative Assembly of Alberta, I have a responsibility to report to the Legislative Assembly and to the people of Alberta on the activities of my Office over the past year. This type of annual public reporting is a cornerstone of transparency in democratic systems and serves to inform the readers about the role and function of my Office. It also is an opportunity to provide an update on the current level of administrative fairness demonstrated by public bodies in the delivery of services to citizens and the resolution of complaints which arise when unfairness is perceived in these processes.

As I explained in last year's report, the concept of an Ombudsman has been found in democratic societies for over 200 years. Historically, an Ombudsman was described as an independent public official appointed by a legislature or parliament to receive and investigate complaints from citizens who felt unfairly treated and to seek resolution of those complaints while contributing to continuous improvement in the administration. These guiding principles have remained largely unchanged over the intervening years. In most societies, the work of the Ombudsman goes largely unnoticed by the general public but is fundamental to ensuring citizens continue to be treated fairly by government departments and other public bodies under the Ombudsman's jurisdiction.

As the Alberta Ombudsman, I pursue a non-adversarial approach to problem resolution whenever possible. My job is not about affixing blame and pointing fingers. It is about providing resolution and redress for complainants when the public authority is found to have acted unfairly and making recommendations for systemic change when appropriate to mitigate the risk of a similar unfairness occurring in the future. On other occasions, when I determine the public authority has acted fairly, my responsibility is to explain that to the citizen and try to help them understand why things turned out as they did. The Alberta Ombudsman's office is an office of last resort as provided for in the *Ombudsman Act*. Therefore, many calls from citizens do not result in investigations by my Office. We are often able to refer the person to another appropriate avenue to pursue resolution of their concerns. In this way we enable a person to resolve their complaints on their own which improves the level of trust and transparency in interactions between citizens and public bodies.

## FAIRNESS WEEK 2009

The first recognized Ombudsman was appointed in Sweden in 1809. Last year we celebrated the 200th Anniversary of this memorable occasion during the World Congress of the International Ombudsman Institute in Stockholm. The Canadian Council of Parliamentary Ombudsman, which represents Ombudsman from across Canada, pursued an initiative to commemorate this anniversary by having the week of October 12-16, 2009 proclaimed Fairness Week in each province and to undertake various initiatives to promote a better appreciation of what constitutes administrative fairness in interactions between citizens, public bodies and government departments. Although Alberta did not proclaim Fairness Week, my Office pursued a number of initiatives to educate citizens about administrative fairness

and enhance their understanding of the responsibilities of the Alberta Ombudsman. We took out advertisements in University and minority language newspapers and other publications and set up information kiosks and forums at the University of Alberta and the University of Calgary. In an effort to inform Albertans who speak a language other than English in their homes, we translated our information brochure into the following languages which represent seven of the most commonly spoken languages in the home other than English in Alberta: Chinese – Traditional, Chinese – Simplified, French, Cree, Punjabi, Spanish, Tagalog and Vietnamese. The translated brochures are now found on our website under the link "Information Brochures." We also issued a media release to inform citizens about administrative fairness and how my Office can help when a person feels unfairly treated. Similar initiatives were undertaken in the other provinces in Canada and in most of them, the government proclaimed the week to be "Fairness Week." Further efforts to promote administrative fairness in Alberta will be pursued by my Office in the coming year.

**Russ Watts** assumed the position of Operations Manager for Central Region of Alberta Transportation, after recommendations were made to his department and was most helpful in discussions to implement those recommendations.

## OVERVIEW OF THE PAST YEAR

The volume of contacts and complaints received by my Office remained relatively static with just a slight reduction from last year's levels of activity. Later in this report, you will find a statistical overview of the workload of the Office over the past year. What we did experience was complaints received with respect to the complaint handling mechanisms of several authorities we had minimal previous exposure to such as several Health Profession colleges, the patient concerns resolution process administered by Alberta Health Services and the Alberta Veterinary Medical Association. These resulted in very lengthy and complex investigations as we learned about these processes and worked with the representatives of the authorities to improve the administrative fairness of their internal complaint handling systems as well as resolving the substantive complaints of the citizens who brought forward their concerns. We have found these investigations to be very challenging but fully expect the work completed will create a sound foundation which will pay dividends by reducing complaints about these authorities in future.

**Sharlene Standing** Complaints Director, College of Licensed Practical Nurses of Alberta, was very responsive to our recommendations to improve the administrative fairness of their process and was very interested in learning how to set up administratively fair processes.

Ombudsman investigations are focused on the principles of administrative fairness which the various levels of the courts in Canada have prescribed in decisions over the years. We have captured the essence of those principles in the Administrative Fairness Guidelines which can be found on my website at www.ombudsman.ab.ca. In this report you will find an explanation of each of these guidelines along with some actual summaries of investigations completed this year which demonstrate the application of these principles to determine fairness in interactions between citizens and authorities.

I also continue to emphasize the use of more informal problem solving approaches instead of formal investigations when warranted and we continue to have success with these techniques. This is an area I want to take more advantage of and we will continue to make it a priority in the coming years.

**Dr. Raymond Howard**
Chair, Out-of-Country Health Services Committee, along with the Committee members, implemented policies and practices in a timely manner from the recommendations made in the own motion report *Prescription for Fairness* to make the Committee process more administratively fair.

## SIGNIFICANT DEVELOPMENTS

I reported last year that we completed a major systemic investigation with respect to the Out-of-Country Health Services program which resulted in 53 recommendations for change to improve the fairness of the administration of that program. I am pleased to report that all of my recommendations have been accepted and most have already been implemented. A summary update is contained later in this report.

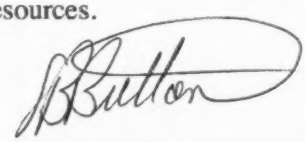
Over the last few years, I have commented on the difficulty being experienced resolving a jurisdictional dispute with respect to my authority to investigate complaints about actions and decisions of the Alberta Human Rights Commission and the Chief of the Commission and Tribunal's ability to implement my recommendations. This has resulted in several investigations being held in abeyance for a significant amount of time. I am pleased to report that through ongoing dialogue and discussion, we have made some headway in this regard and I am optimistic that we will be able to continue to move ahead on this matter.

## IN CONCLUSION

The past year has seen this Office investigate new processes administered by authorities we have not previously investigated. I expect this to continue especially with respect to the Health Profession colleges as more of them come under my jurisdiction. While these emerging jurisdictions are adding significantly to the workload of my Office, we continue to receive and investigate a large volume of complaints about actions or decisions of more traditional jurisdictions such as government departments.

I normally experience excellent cooperation from the authorities investigated when it comes to accepting my findings and implementing my recommendations to bring redress to the affected person and also improve the fairness of administrative processes and complaint handling systems. When that cooperation is not immediately evident, I meet with the authorities to discuss options and seek ways to resolve issues to our mutual satisfaction. There are exceptions and we continue to dialogue with the representatives of these authorities to find solutions to our differences.

We have experienced some attrition of staff this year but have been successful in identifying and hiring very capable and competent replacements. In a small office environment like ours, it is an ongoing challenge to hire, train and mentor new staff. We are also not alone in dealing with the economic realities of the day and adjusting to fiscal restraint as the Government of Alberta tries to balance the books for Alberta. Increases to our resource levels which were being planned prior to the recession to enable us to conduct more systemic investigations on my own motion and pursue more varied approaches to informal problem resolution remain on hold. I will pursue funding for these additional resources when economic conditions are more favourable. In the interim, we continue to strive to provide the best service possible to citizens, authorities and the Legislative Assembly of Alberta with available resources.



G. B. (Gord) Button
Alberta Ombudsman

# BUSINESS PLAN UPDATE

## BUSINESS PLAN UPDATE

Our 2007/08 - 2009/10 Strategic Business Plan is a tool we use for guidance and future direction. We review and update the Plan annually.

We identified four core objectives to accomplish our goals. They are:

- manage the workload in an efficient and effective manner;
- excel in investigations;
- support workplace wellness and staff development; and
- enhance the knowledge and understanding of the role of the Ombudsman.

Following are highlights of initiatives undertaken this year to meet our objectives.

### Objective #1: To Manage the Workload in an Efficient and Effective Manner.

- Oral and email inquiries are responded to appropriately and promptly, as follows:

| Target | 2009/10 Actual | 2008/09 Actual |
|---|---|---|
| 90% of email inquiries responded to within 24 hours | 100% response within 24 hours | 100% response within 24 hours |
| 90% of telephone inquiries responded to within 4 hours | 95% within 2 hours<br>100% within 4 hours | 95% within 2 hours<br>100% within 4 hours |

- Continued to improve investigation report guidelines and template resulting in a simplified document with defined use of appendices.

- The investigators carried an equitable assignment of investigation files, averaging 21 open files per investigator.

- One vacant investigator position was transferred from Edmonton to Calgary. As at February 2010, the Alberta Ombudsman's office was fully staffed with 25 FTEs (Full Time Equivalents) including 13 investigators. Due to negative economic conditions, our budget request for 2009/10 for dedicated staffing for own motion investigations and mediation was denied.

**Objective #2: To Excel in Investigations.**

- We continue to focus on achieving a balance of timely and thorough investigations as identified below.

| File Closure – All Written Files Target | 2009/10 Actual | 2008/09 Actual |
|---|---|---|
| 75% of files completed within 90 days | 83% | 82% |
| 80% of files completed within 180 days | 86% | 87% |
| 90% of files completed within 1 year | 91% | 94% |
| 100% of files completed within 2 years | 97% | 99% |

- There was a 2% increase (from March 31, 2009) in the number of active files as of March 31, 2010.
- 100% of complainants are contacted within 14 days of receipt of their written complaint (target: 90%).
- 92% of complainants are contacted within 10 days of assignment of the file to an investigator (target: 85%).
- As part of the orientation and skill development process, new investigators are mentored by an assigned Team Leader/Senior Investigator.

**Objective #3: To Support Workplace Wellness and Staff Development.**

- All staff participated in annual performance reviews.
- The file completion benchmark for investigators is 25 files per year and appropriate targets are linked to the performance reviews.
- Due to budget constraints, there were no achievement awards for employees in 2009/10 and will not be funded for 2010/11.
- Staff development opportunities were identified within individual learning plans, including:
    - University of Alberta Management and Executive Management Development Program;
    - Ontario Ombudsman Sharpening Your Teeth program for advanced investigative training;
    - Canadian Bar Association lectures; and
    - Administrative Law & Practice forum from Osgoode Professional Development.

**Objective #4: To Enhance Knowledge and Understanding of the Role of the Ombudsman.**

- The Ombudsman performed an outreach tour visiting the Olds-Didsbury-Three Hills and Banff-Cochrane MLA constituency offices in July 2009. In September 2009, the Ombudsman visited the West Yellowhead and Hinton MLA constituency offices.

- Our Office is promoting greater awareness of our services through:
  - authority consultations;
  - advertising in public transit, University and minority language newspapers and other publications;
  - stakeholder mail-outs of posters and brochures;
  - attendance at Calgary's Immigrant and Refugee Seniors "Speak Out" forum;

- Fairness Week information kiosks and forums at the Universities of Alberta and Calgary;
- representation at Calgary's Law Day and Calgary Urban Aboriginal Initiatives Open House;
- 32 presentations to various groups, including:
    - School-at-the-Legislature program to educate grade six students on the role of the Alberta Ombudsman's office;
    - Law Day 2009 in Drumheller, Alberta;
    - Canadian Institute's Advanced Administrative Law and Practice, Employment Standards, the Canadian Bar Association – Health Law Sector, Grant McEwan University – Legal Administration; and
    - Other service groups and conferences.

# OUR ROLE

## OUR ROLE

The Alberta Ombudsman has the authority to investigate decisions, actions and recommendations made by a jurisdictional authority. Individuals who have concerns or complaints about the fairness of administrative actions by Alberta government departments, agencies, boards, commissions, designated professional organizations and the patient concerns resolution process of Alberta Health Services may bring these matters to the Ombudsman. Contact may be made by a phone call to the Office, through a letter, through the online complaint form located on our website or in person.

If the initial contact is made by phone, the call will be directed to an intake officer who determines the caller's issues and whether the concern is with an agency jurisdictional to the Ombudsman. If the concern is not jurisdictional, the caller is referred to the appropriate source for information or assistance.

## APPEAL MECHANISMS

The caller may have a concern regarding the actions of a jurisdictional body but may not have used all available appeal processes. The *Ombudsman Act* requires complainants to pursue resolution through these processes before seeking help from the Ombudsman. If all appeal processes are not exhausted, the intake officer will provide information on options and processes available to the caller.

Callers with a jurisdictional complaint who have completed the appeal processes may be able to resolve their complaint through Informal Resolution. For example, the caller may be an inmate who brought a concern to the correctional centre director but has not received a response. Rather than ask the inmate to make a formal written complaint to the Ombudsman, the intake officer may contact the director, provide information and inquire about the status of the inmate's concern. The intake officer may determine the director's response was sent but not received or the call may prompt a more timely response to the inmate. Whatever the outcome, such informal action by our Office is an attempt to successfully resolve the issue in a timely fashion.

For all other oral complaints, the intake officer explains the process of making a written complaint by online complaint form or by letter. The caller is advised of the process that occurs once the Ombudsman receives a written complaint.

## COMPLAINT ANALYSIS

The *Ombudsman Act* states all complaints to the Ombudsman shall be in writing. A complaints analyst reviews written complaints. The analyst will consider whether:

- the complaint is about a department or agency under the authority of the *Ombudsman Act*;
- the complainant has exhausted all avenues of appeal;
- the complaint is a matter before the courts;
- the complainant has been directly affected by the action or decision being complained about;
- the complainant has third party representation; and
- the complainant has come forward in a timely manner.

The analyst will also identify the issues within the complaint. Anonymous complaints are not acted upon.

If the Ombudsman accepts the complaint, there are two options for resolution: an Alternative Complaint Resolution may be attempted or the matter may proceed to a formal investigation. In both cases, the file is assigned to an investigator.

## ALTERNATIVE COMPLAINT RESOLUTION

The Alternative Complaint Resolution (ACR) process is a less formal process for handling complaints. It may be pursued for the following complaints:

- those which may have a reasonable chance of resolution within 21 days;
- those which involve fewer or less complex issues and are specific to the complainant; and
- where a less formal complaint resolution would be appropriate.

In order to proceed with ACR, the process must be agreed to by both the complainant and the complained-about department. After the issues are clarified with the complainant, a department representative is contacted and possible avenues of resolution are discussed. Examples of potential resolutions include the provision of additional information exchanged between parties or negotiation of further actions by either party. The Ombudsman's investigator facilitates the complaint resolution but does not advocate for the interests of either party. If the matter is successfully resolved, the file is closed. If ACR is unsuccessful, the matter is reconsidered for formal investigation.

## FORMAL INVESTIGATION

A formal investigation begins with correspondence to the complainant and the Deputy Minister responsible for the department or the head of the agency. If the complaint involves actions of more than one department, files are opened with each department. The correspondence outlines the parameters of the issues for investigation and the letter to the department usually includes a copy of the complaint letter or the details from the online complaint form. The department is asked to provide a written response, which should include all relevant documentation, policy and legislation. The investigator reviews this response and file materials relevant to the complaint and interviews appropriate department staff members to determine if there is additional information related to the identified issues. The investigator also interviews the complainant to obtain any additional information or clarification of the issues. The investigator may interview anyone believed to have information relevant to the investigation and request copies of all pertinent documents that the complainant or others may have in their possession.

Once all information is gathered, the investigator analyzes the information based on the principles of administrative fairness and prepares an Investigation Report. This report identifies the issues investigated and provides background for the complaint. Information relevant to each issue is described and analyzed and conclusions are explained. Based on the analysis and conclusions, the investigator recommends a resolution for each issue to the Ombudsman.

## ADMINISTRATIVE UNFAIRNESS

If administrative unfairness is identified, the issue is supported. The issue is not supported if the action or decision did not demonstrate administrative unfairness and were consistent with legislation, policy and the principles of administrative fairness. For administratively unfair issues, the Ombudsman recommends a remedy which must be consistent with the nature of the unfairness. For example, if a decision was written in an administratively unfair manner, the Ombudsman may recommend the decision be rewritten or amended to rectify the deficiencies. If a hearing was conducted in an administratively unfair manner, the Ombudsman may recommend the decision be set aside and a new hearing held.

## INVESTIGATION CONCLUSION

At the conclusion of the investigation, the Ombudsman reports his findings on unsupported complaints to the complainant and the department or agency investigated. The decision identifies each issue investigated and the findings or conclusions.

On supported complaints, the Ombudsman shares his findings and recommendations with the Deputy Minister of the department or agency head and gives that person the opportunity to respond. When the Ombudsman makes a recommendation, he relies on the power of persuasion as he does not have the authority to require an action. There are occasions when the Deputy Minister or agency head agrees with the findings of administrative unfairness but will offer a different option for resolution. The recommendation for final resolution will be one which is acceptable to both the Ombudsman and the Deputy Minister or agency head. Once agreement is reached on a resolution, the conclusion is shared with the complainant. On the very rare occasion when no agreement is reached between the Ombudsman and the Deputy Minister or agency head, the Ombudsman has the power to report to the Minister, the Lieutenant Governor in Council and ultimately to the Legislature.

Some recommendations for resolution result in an action that directly impacts the complainant. Other recommendations correct a systemic issue that affects more than one person and improves the process or system within a department or agency.

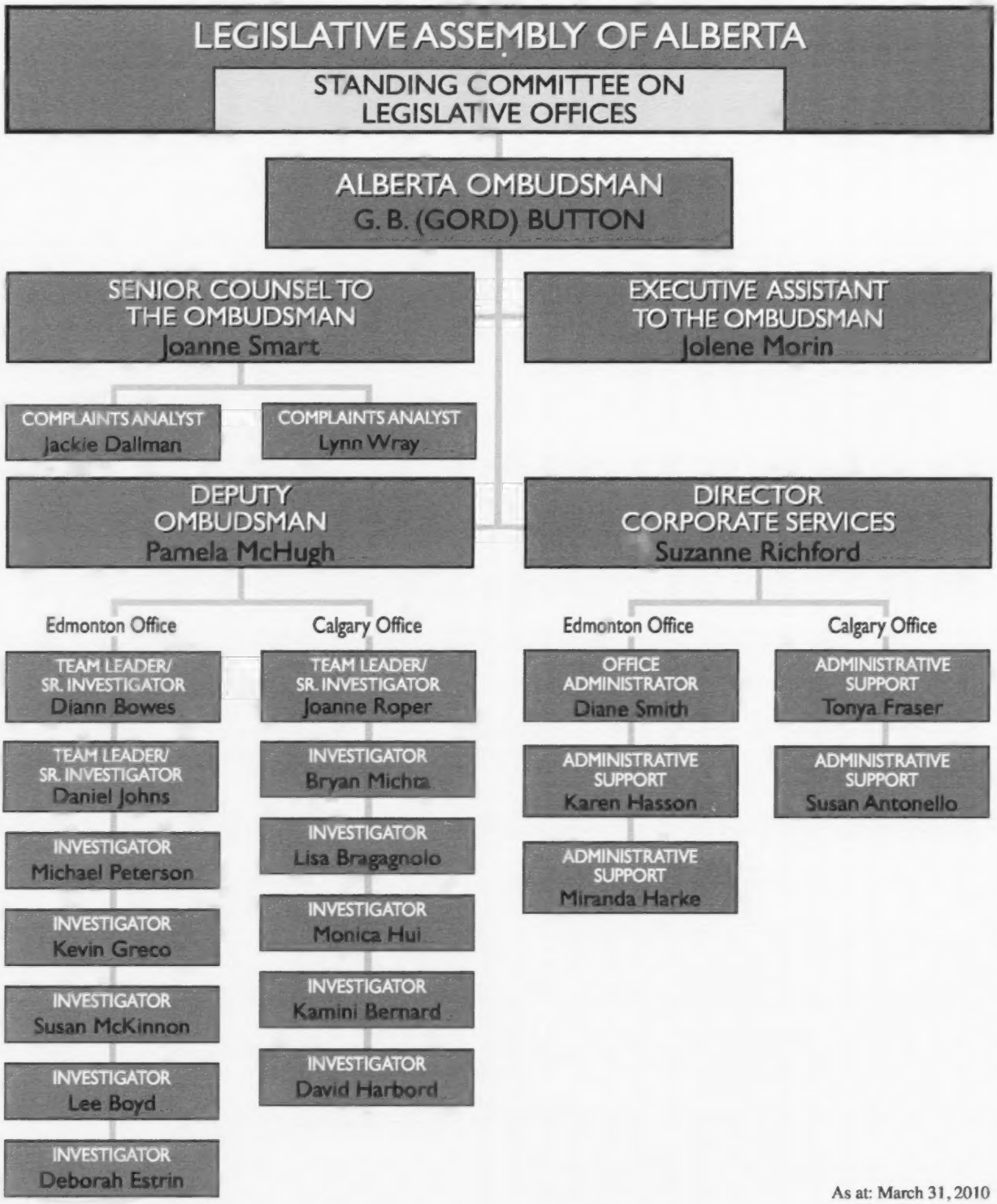
## OWN MOTION INVESTIGATIONS

The Ombudsman has an additional investigative power to conduct an own motion investigation, initiated at his own discretion. For example, an own motion investigation may result from a number of questions about the administrative fairness of a program that have come to the Ombudsman's attention through various investigations. When commencing an own motion investigation, the Ombudsman advises the Minister and the public and reports publicly on his findings upon conclusion.

## COMMITTEE-REFERRED OR MINISTERIALLY-ORDERED INVESTIGATIONS

The *Ombudsman Act* contains two other ways in which the Ombudsman may commence an investigation: a committee of the Legislative Assembly may refer a matter to the Ombudsman for investigation or a Minister of the Crown may order the Ombudsman to conduct an investigation.

# ORGANIZATIONAL CHART




As at: March 31, 2010

# 2009-2010

YEAR IN REVIEW

# YEAR IN REVIEW

**April 1, 2009 through March 31, 2010**

Of the 803 written complaints received, the most common authorities by volume of complaints are:

*Alberta Solicitor General and Public Security*
9.6%

*Workers' Compensation Board*
7.3%

*Alberta Employment and Immigration*
7.1%

*Alberta Justice and Attorney General*
6.8%

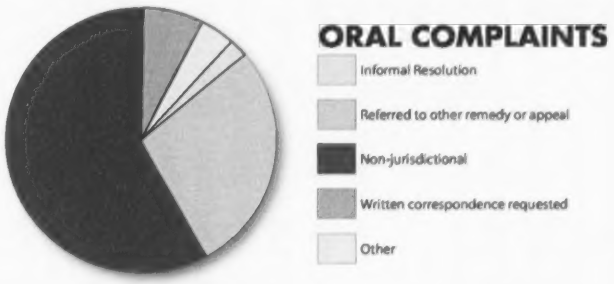
*Appeals Commission for Alberta Workers' Compensation*
5.2%

*Alberta Children and Youth Services*
4.4%

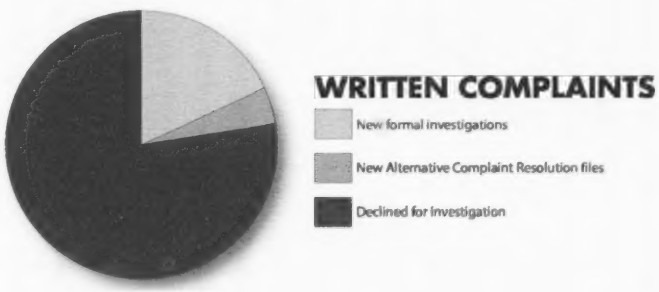
*Alberta Health and Wellness*
3.4%

*Health Professions*
3.1%

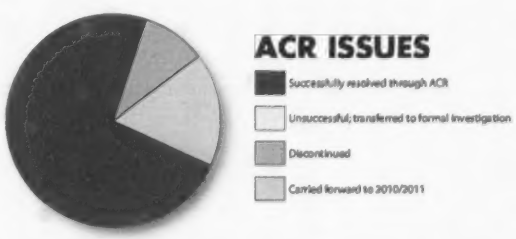
4,301 Oral complaints received
- 107 Informal Resolution *
- 1,205 Referred to other remedy or appeal
- 2,511 Non-jurisdictional
- 304 Written correspondence requested
- 174 Other




803 Written complaints received
- 147 New formal investigations
- 35 New Alternative Complaint Resolution (ACR) files containing 41 issues
- 621 Declined for investigation (referred to other remedy or non-jurisdictional)




41 Total ACR issues
- 30 Successfully resolved through ACR
- 0 Unsuccessful; transferred to formal investigation
- 4 Discontinued
- 7 Carried forward to 2010/11

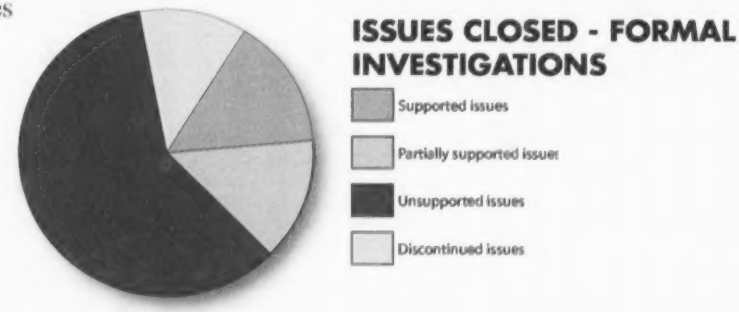


299 Files carried forward from previous years

795 Files closed as of March 31, 2010

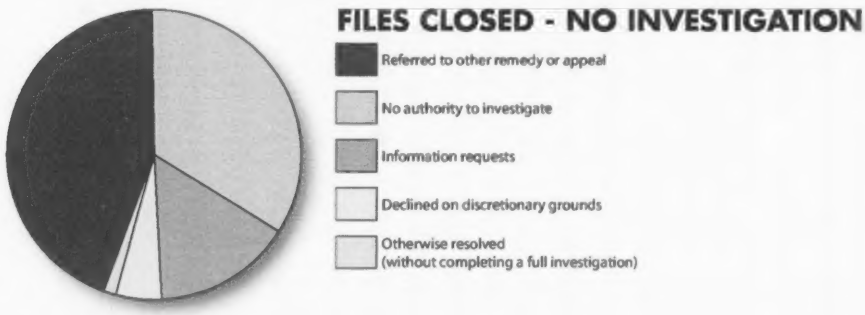
140 Formal investigations completed containing 229 issues

- 34 Supported issues
- 32 Partially supported issues
- 136 Unsupported issues
- 27 Discontinued issues




621 No investigation initiated

- 275 Referred to other remedy or appeal
- 212 No authority to investigate
- 95 Information requests
- 32 Declined on discretionary grounds
- 7 Otherwise resolved (without completing a full investigation)

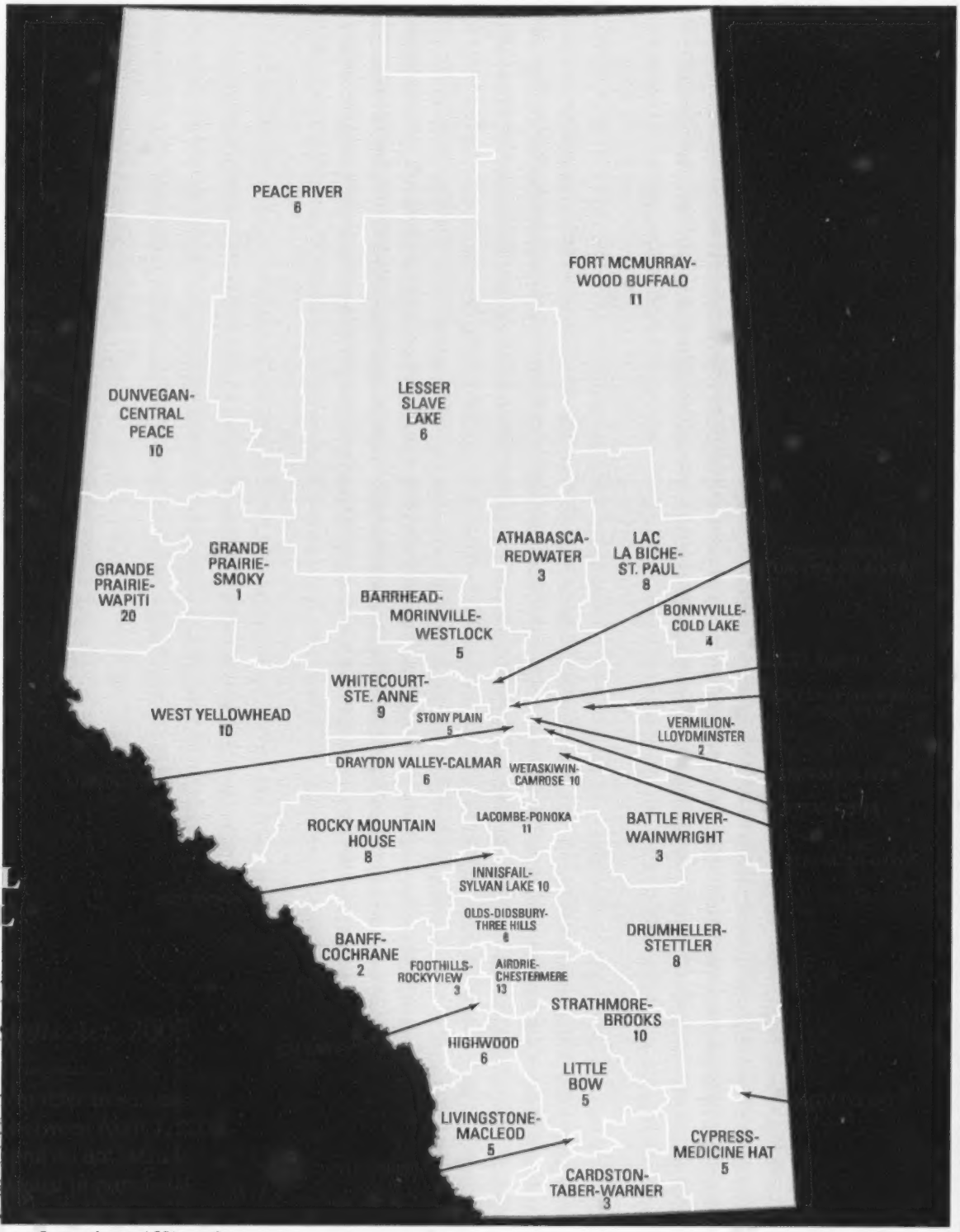

FILES CLOSED - NO INVESTIGATION
Referred to other remedy or appeal
No authority to investigate
Information requests
Declined on discretionary grounds
Otherwise resolved
(without completing a full investigation)

34 ACR files closed

305 Files carried forward to 2010/11

*2.5% of oral complaints received were resolved in discussion with the authority without requiring a formal investigation.

# COMPLAINTS BY ELECTORAL DIVISION




## PROVINCIAL ELECTORAL DIVISIONS

as defined by t
*Electoral Divi*

The figures on the r
complaints received
and March 31, 201(
complaints that orig
correctional centres
penitentiaries (7), out of province (60) and
no city specified (11).

# ADMINISTRATIVE FAIRNESS

## ADMINISTRATIVE FAIRNESS GUIDELINES

Through the investigative process, we determine whether the actions or decisions that resulted in a complaint are administratively fair. We determine fairness by applying the following guidelines to each case.

1. ***Chain of legislative authority.*** What legislation created the authority or power to make a decision and to which decision-maker was the power granted?

2. ***Duty of fairness.*** The courts require that decision-making that affects the rights of individuals must follow a fair process. This duty of fairness means there must be procedural fairness in decision-making. We look for greater procedural protection if there is:
   - no right of appeal established within the statute;
   - no further appeal mechanism within the department, agency, board or professional body; and
   - a substantial effect on the individual's rights (i.e., loss of financial benefits).

3. ***Participation rights.*** Was the complainant given a full and fair opportunity to present the case to the decision-maker? Was the case against the person fully disclosed to the person?

4. ***Adequate reasons.*** There must be a rational connection between the evidence presented and the conclusions reached by the decision-maker. The decision-maker must identify and clearly communicate the decision and the reasons for the decision.

5. ***Reasonable apprehension of bias.*** We look for impartiality and independence of the decision-maker including relationships to all parties in the matter, both internally and externally.

6. ***Legitimate expectation.*** Did the decision-maker fail to honour a commitment or follow regular procedures?

7. ***Exercising discretionary power.*** We look at how discretion is established in the Act, Regulation, Policy, Guidelines, etc. Discretionary decisions are reviewed to determine if there is evidence of bad faith, improper purpose or irrelevant considerations.

8. ***Was the decision reasonable?*** A reasonable decision does not equate to whether the decision is wrong or whether a different conclusion could have been reached. A reasonable decision shows how the decision-maker considered and assessed the arguments and evidence.

## ADMINISTRATIVE FAIRNESS CASE SUMMARIES

This section explains how the administrative fairness principles are applied by the Alberta Ombudsman and illustrates examples of cases where recommendations by the Ombudsman resulted in improved processes.

### 1. CHAIN OF LEGISLATIVE AUTHORITY

When commencing an investigation, we examine the relevant legislation since all powers of government departments, agencies, boards, commissions, designated professional organizations and the patient concerns resolution process of Alberta Health Services are derived from statute. We determine whether the legislation has delegated decision-making powers to a legislated entity or an individual. A statute may grant the organization the ability to make regulations and grant decision-making power or it may grant the decision-maker the authority to exercise discretion based on parameters set out in regulation or in directives and policy.

If there are no specific powers in the legislation, we look at the *Government Organization Act*. This Act establishes the general authority of a department or agency to create programs, delegate powers, enter into agreements and establish boards or tribunals.

Once legislative authority is established, we determine whether the decision-maker had the authority or understood he or she had the authority to make the decision and whether it was made in a manner consistent with that required in legislation, regulation or policy. We also confirm the relied upon legislation, regulation or policy was valid at the time of the decision.

*Case summary: Alberta Children and Youth Services*

An individual complained a caseworker with Child and Family Services Authority (CFSA) in **Alberta Children and Youth Services** made an inappropriate comment about the individual. The comment in question was as a result of an assessment by a therapist which became part of a discussion between the individual and the caseworker. The individual continued to pursue the matter by requesting an administrative review. That request was granted and the administrative review resulted in a decision that the caseworker acted in accordance with legislation and policy by documenting the results of the assessment.

The Ombudsman's investigation found that there was no authority either in legislation or policy for the CFSA to conduct an administrative review. There is policy on what can go forward to an administrative review, and the policy was very clear that decisions of an operational or an administrative nature cannot go forward to an administrative review. The CFSA accepted the Ombudsman's recommendation that a letter be sent to the complainant containing an explanation of the error and an apology.

*Case summary: Appeals Commission for Alberta Workers' Compensation*

An injured worker complained the **Appeals Commission for Alberta Workers' Compensation** unfairly refused to consider his arguments relating to a possible breach of his Charter of Rights and Freedoms in relation to surveillance conducted by the Workers' Compensation Board which affected his entitlement to compensation benefits.

The Ombudsman was unable to support the worker's Charter concerns. The Ombudsman's investigation found that the Appeals Commission had properly explained to the worker that the decisions of the Supreme Court of Canada no longer apply to the Appeals Commission with respect to Charter challenges because of the enactment of two pieces of Alberta legislation in 2006. The Appeals Commission decision quoted the relevant legislation and provided a complete explanation of the impact of that legislation on the worker's request.

*Case summary: Alberta Employment and Immigration*

The Ombudsman investigated a complaint that the **Citizens' Appeal Panel** unfairly upheld the decision to deny Assured Income for the Severely Handicapped benefits. The investigation found that while the Panel made reference to the relevant Regulation governing the decision, it did not quote the content of the Regulation which would have established the criteria upon which the medical evidence was assessed. The Ombudsman's recommendation to write an addendum was accepted by the department.

## 2. DUTY OF FAIRNESS

The courts require decisions affecting the rights of individuals must follow a fair process. Decisions made by administrative bodies often have a more immediate and profound impact on people's lives than a court decision. Flowing from these decisions is a duty to act fairly and to make procedurally fair decisions. It is the Ombudsman's legislative mandate to investigate complaints about the administrative fairness of decisions made by Alberta government departments, agencies, boards, commissions, designated professional organizations and the patient concerns resolution process of Alberta Health Services.

The duty of fairness is flexible and variable, depending on the statute involved and the nature of the decision. The degree of fairness required is dependent on the effect of the decision on the rights of the individual and whether legislation established an avenue of appeal. If there is no established right of appeal, or if the individual has appealed to the final level of decision-making, the requirement for procedural protection, or fairness, is greater.

Procedures used by decision-makers vary depending on several factors, including:

- the nature of the decision;
- the level of legal sophistication and expertise of the decision-makers; and
- whether this is the last level of consideration.

For example, a government employee's decision in response to a citizen's request may be communicated differently from the decision of an administrative tribunal. The **Maintenance Enforcement Program** frequently communicates with clients through email due to the high volume of interactions with clients. An email response in some situations is deemed sufficient and administratively fair. In other situations, email is inadequate and therefore unfair.

Greater procedural protection is required when there is a substantial effect on an individual's rights such as loss of financial benefits, licence cancellation, disciplinary suspension or the right to continue in a profession or employment. Professional regulatory bodies under the *Health Professions Act* have stringent discipline procedures for their members set out in legislation and regulation. Administrative fairness requires strict adherence to the rules.

A decision of the **Appeals Commission for Alberta Workers' Compensation** is an example of a final avenue of appeal where the decision has a significant impact on the individual worker. The Appeals Commission Rules of Procedure include rules such as notice and disclosure, recording of proceedings and requirements of written decisions. The Appeals Commission meets the duty of fairness by following the established rules.

*Case summary: Alberta Advanced Education and Technology, Learner Assistance*

A student complained he had been denied the right to apply for further student financial assistance from **Learner Assistance** due to allegations he had provided false information about his residency and about financial assistance he received from another province. His appeal of that decision was unsuccessful.

The Ombudsman's investigation found the factual base used in the appeal process was wrong as there was no evidence the student had received financial assistance from another province. The investigation also demonstrated the appeal process was unfair. The principle findings were:

- the student was not provided copies of the investigation report which meant he could not dispute the errors in fact;
- the student's main argument about residency was not addressed in the appeal decision;
- the decision-maker simply checked a box denying the appeal

which did not demonstrate he considered the evidence or made an informed decision; and
- the decision letter was not written by the decision-maker, but by the person who made the original decision which did not demonstrate independence by the person hearing the appeal.

As a result of this investigation, the department rewrote its original decision to correct the errors. The student was offered the right to appeal the rewritten decision. Just as important as the resolution for the student were the changes the department agreed to make to its appeal process, as follows:
- time frames for appeals will be made consistent with legislation;
- decision letters will contain clearer information on how to launch an appeal;
- an ability to waive time limits to appeal will be established;
- students will receive a summary of the information used to make a decision and will be offered an opportunity to comment on the information, before the appeal is finalized;
- the investigations unit will not review appeals once they have been filed unless new information or evidence has been submitted with the appeal;
- clarification of the suspension penalty will be added to the policy; and
- discretion as to the scope of the penalty will be allowed in exceptional circumstances.

*Case summary: Advanced Education and Technology, Private Vocational Training Branch*

The Ombudsman investigated the administrative fairness of how the **Private Vocational Training Branch** handled a complaint about a private vocational training institution. Although the final decision made by the Branch was reasonable, there was an unfair delay in making that decision. The investigation also found that the Branch did not provide an explanation for the delay to the student.

The Ombudsman recommended that a letter of apology be sent to the student and that a procedure be developed to handle complaints about training institutions. The procedure should include timelines and a guideline about communicating status or delays. The Omudsman received confirmation that a more complete complaint handling process had been developed and a letter of apology had been sent out to the student.

### 3. PARTICIPATION RIGHTS

There are two elements to participation rights. First, a person is entitled to a full and fair opportunity to present his or her case to the decision-maker. A government department, agency, board, commission, designated professional organization or the patient concerns resolution process of Alberta Health Services demonstrates this by requesting information from the person and ensuring sufficient time for the person to respond. A tribunal invites all parties to provide written submissions or present orally at a hearing, ensuring there is sufficient notice of the hearing. The tribunal provides a meaningful opportunity to be heard when all parties have sufficient time to state their position.

**Citizens' Appeal Panels** protect participation rights in a tribunal process. Persons who disagree with decisions about certain financial benefits have the right to appeal those decisions to the Panel. Appellants are notified in writing of the hearing time, date and place. At the hearing, appellants may make a presentation, either orally or in writing, and may make a final statement prior to the hearing's conclusion.

Another example is the **Alberta Human Rights and Citizenship Commission** process. During the Commission's investigative process, information obtained during interviews is transcribed and submitted to the interviewee. The person may then correct errors or omissions before decisions are made about the issue under investigation.

The second element of participation rights is a person's entitlement to full disclosure of the case. This includes access to any report or information that a decision-maker has relied upon to make a decision.

*Case summary: Alberta Employment and Immigration*

The Ombudsman investigated a complaint that **Alberta Employment and Immigration** failed to fully advise an individual of its decision and failed to allow enough time for appeal preparation by not providing the written decision in advance of the appeal hearing. The written decision was provided to the individual on the day of the appeal hearing, just before the hearing started. The policy at that time required that the appeal package, which included the written decision, was to be given to the appellant "in advance of the hearing."

The Ombudsman found that the written decision should have been given far enough in advance of the appeal hearing for the appellant to be able to consider it and fully understand it in order to prepare for the appeal. Departmental policy spoke of giving appellants sufficient time to know and understand the decision. It was the position of the Ombudsman that "in advance" should not be interpreted to mean just before the appeal hearing on the hearing date. The Ombudsman recommended the department communicate to its staff the importance of providing the written decision prior to the appeal hearing date to allow for a full opportunity to understand the decision and prepare for the appeal. Both recommendations were accepted and implemented by the department.

### 4. ADEQUATE REASONS

Canadian courts imposed a common law obligation on administrative decision-makers to provide adequate written reasons. It is not enough to outline the evidence and arguments made by the parties. There must be a rational connection drawn between the evidence and the conclusions, including a clear explanation of how the relevant legislation, regulation or policy was applied. Decision-makers should not only explain what evidence was relied on to make the decision, but also what evidence was rejected and why it was rejected. A well-written decision must address the major arguments raised by all parties. Generally, it is only necessary to refer explicitly to evidence directly relevant to the issue. Decision-makers are not required to address every point or piece of evidence but they must address the major evidence they relied on or rejected to reach their decision.

The decision and reasons must be clearly communicated in language easily understood by a reasonably informed person. The decision should answer the question, "Why did the decision-maker make that decision?"

*Case summary: Alberta Advanced Education and Technology, Employment Standards*

An individual complained that **Employment Standards** unfairly upheld the decision to deny payment of termination or severance pay. During the Ombudsman's investigation, Employment Standards made two key changes to its process:

- appellants are now advised to seek legal advice if they remain dissatisfied with the appeal decision; and
- employers will now automatically receive a copy of the appeal decision, rather than being expected to request one.

The Ombudsman's investigation found that Employment Standards had sufficient grounds for the decision to deny the payment. However, there were a number of findings of administrative unfairness about the written appeal decision including:

- inadequate references to the sections in the Employment Standards Code relating to the authority to conduct an appeal; employer obligations when terminating an employee; termination for just cause; and that there is no further avenue of appeal under the Code;
- failure to identify the issues of appeal; and
- failure to address the major arguments in the written decision.

The Ombudsman recommended Employment Standards issue an addendum to the original appeal decision to rectify the identified administrative errors, and that the Procedural Manual being developed incorporate the administratively fair processes that were highlighted during this investigation. All the recommendations were accepted and implemented.

*Case summary: Alberta Employment and Immigration*

An individual complained the decision of the **Citizens' Appeal Panel** to uphold the denial of her eligibility for Assured Income for the Severely Handicapped benefits was unfair. The Ombudsman's investigation found that the Panel failed to define the criteria it used in order to find that the individual's condition did not meet the definition of "severe handicap." The Ombudsman found the Panel failed to make a link between the decision it made and the criteria it was applying and that the Panel failed to explain how it weighed the evidence which had been presented. The Ombudsman also found that the Panel relied on an irrelevant consideration when it made a suggestion about action the client could take, but failed to explain how that suggested action met the terms of the legislation.

The Ombudsman recommended the Panel write an addendum to clarify the identified shortcoming of the decision. That recommendation was accepted.

*Case summary: Institute of Chartered Accountants of Alberta*

An individual complained the Appeal Tribunal for the **Institute of Chartered Accountants of Alberta** ignored relevant evidence when it determined there was insufficient evidence of unprofessional conduct on the part of a chartered accountant to warrant a referral to a disciplinary hearing. The Ombudsman's investigation determined the Appeal Tribunal dealt fairly with the question of introducing new evidence. The Appeal Tribunal listened to the arguments as to why it should or should not allow the evidence and made a reasonable decision to refuse to allow the introduction of the evidence. The Ombudsman found the Appeal Tribunal did not fairly explain how it weighed the evidence and major arguments or how the major arguments related to its conclusions.

The Ombudsman recommended the Appeal Tribunal rewrite its decision to correct the identified shortcomings. The Appeal Tribunal chose to issue additional reasons. The Ombudsman was satisfied that the additional reasons coupled with the original decision document met his recommendation.

*Case summary: Alberta Solicitor General and Public Security*

An inmate complained about a number of issues regarding his treatment in a **correctional centre**. There were four issues identified for investigation and a further two were added after the investigation commenced. The Ombudsman's investigation was unable to support complaints of alleged harassment of the inmate in relation to transfers and random cell searches; denial of canteen privileges; unfair transfer to administrative segregation; and alleged denial of contact with a lawyer, as correctional staff had followed policy and procedure.

The Ombudsman's investigation determined that on the fifth issue raised, the investigative process that was followed to deal with the issue was in accordance with policy. In the written response to the inmate, correctional staff failed to provide adequate reasons for the decision that was made following the internal investigation. The Ombudsman's investigation also determined there were no notes on file documenting the evidence that was collected during the internal investigation. In relation to the last issue investigated, the Ombudsman's investigation found the written response failed to provide an adequate explanation of how the issue regarding the handling of cell effects during transfers was resolved.

The Ombudsman recommended that correctional staff be reminded of the importance of providing written responses to inmates with adequate reasons and of the need for complete documentation of how an issue was dealt with and resolved. The correctional centre revised its written procedures in an effort to implement the Ombudsman's recommendations.

## 5. REASONABLE APPREHENSION OF BIAS

Decision-makers must demonstrate impartiality and independence in making decisions. "Impartial" applies to the state of mind or attitude of the decision-maker so there is no bias, either real or perceived. Impartial decisions are based on objective criteria. To be "independent", the decision-maker must be free from interference by the executive and legislative branches of government and from other external forces such as business interests, corporate interests or other pressure groups.

A widely-quoted excerpt from a 1978 decision of the Supreme Court of Canada established the test for reasonable apprehension of bias:

> What would an informed person, viewing the matter realistically and practically ... conclude? Would he think that it is more likely than not that (the decision-maker), whether consciously or unconsciously, would not decide fairly?

To be impartial and independent, decision-makers should declare real or perceived conflicts of interest. The appearance of impartiality is necessary to maintain confidence in the decision-making process. In cases where it appears decision-makers are not objective even when they feel they could make an unbiased and fair decision, they are obligated to disclose the potential conflict or excuse themselves from the case.

Decision-makers should guard against forming opinions about the person or the case before reviewing the documentation and hearing from all parties. An appearance of bias might result from the behaviour of a decision-maker at a hearing, such as repeatedly silencing a party or behaving in an overly aggressive or sarcastic manner. If the decision-maker was involved in the case prior to the hearing, it may appear to a reasonable person the decision-maker has prejudged the matter.

*Case Summary: Alberta Justice and Attorney General*

> Three employees in the same unit complained that a grievance they had filed alleging workplace harassment by their manager was not handled fairly by the Human Resources area of **Alberta Justice and Attorney General**. During the grievance hearing process, the allegation of workplace harassment was investigated by the Human Resources area and dismissed in two separate decision letters.

The Ombudsman's investigation found that by issuing two decision letters, there was confusion as to who actually decided the grievance. The investigation also determined the decision letters failed to provide the definition of workplace harassment that was used to dismiss the grievance. The Ombudsman's recommendation that new decision letters be issued to the employees was accepted by the department.

A key issue during the Ombudsman's investigation was a concern that the departmental employee assigned to conduct the workplace harassment investigation was the same person who heard the original grievance. The allegation was that there was bias on the part of that employee when she was referred to as the employer's representative during the hearing and was referred to as an independent investigator during the workplace harassment investigation.

The Ombudsman's investigation found no evidence of actual bias on the part of the departmental employee. The Ombudsman did find that there could be a perception of bias and made an observation to the department that it consider the possibility of a perceived apprehension of bias when assigning staff to conduct workplace harassment investigations. The department implemented a process where any harassment investigation that is conducted is discussed directly with executive management within the Human Resources area. A decision will be made at that level as to whether an outside consultant should be retained to conduct the investigation or whether the investigation can be conducted internally.

*Case summary: Alberta Employment and Immigration*

An individual complained about the administrative review that was conducted of a decision to deny income support benefits by **Alberta Employment and Immigration**. The administrative review is an internal review, typically conducted by a supervisor or a manager, prior to an appeal being referred to the Citizens' Appeal Panel. The complaint was that the supervisor had conducted an administrative review of her own decision, that she had removed portions of the appeal submission from the appeal package and that there had been a delay in providing a copy of the administrative review decision.

The Ombudsman determined the purpose of the internal review process is to ensure that decisions are supported by legislation and policy. There is no requirement in legislation that the reviewing person should be independent. There remains an available impartial third party review by the Citizens' Appeal Panel of any decision including the administrative review decision. The Ombudsman was unable to support this portion of the complaint. The Ombudsman also determined the administrative review decision had been provided in sufficient time prior to the appeal hearing.

The Ombudsman's investigation confirmed a substantial amount of material had been submitted by the appellant to support his appeal application. The supervisor acknowledged removing portions of the appeal submission which she felt were not relevant to the issue of appeal in an effort to expedite the process. The Ombudsman recommended the policy be amended to clarify that while staff may provide its own version of the appeal summary and include documentation that it considered in making the decision, staff must always submit the appellant's appeal submission in its entirety to the Citizens' Appeal Panel. This recommendation was accepted by the department.

### 6. LEGITIMATE EXPECTATION

The principle that regular practices or promises of the administrative decision-maker should be taken into account forms the basis of legitimate expectation. A person has a legitimate expectation that when an application form is submitted, the recipient will actually process the application. When a person challenges a decision, it is important and administratively fair for the decision-maker to honour promises made about following procedure, unless the decision-maker provides a high level of procedural rights in a different form. Failing to meet legitimate expectations in decision-making may be as simple as an official failing to follow through after agreeing to take action or write a decision letter; it becomes more complex if the authority fails to follow what may be considered a regular procedure, therefore treating an individual in an unfair manner.

When an inmate in a **correctional centre** is charged with an institutional violation, he or she receives a Notice to Offender/Inmate of Disciplinary Hearing Procedure stating procedural expectations for the disciplinary hearing, such as:

> The hearing adjudicator will ask you questions relating to the information they have received and you shall direct your replies to the hearing adjudicator. If you have questions you wish to ask any witnesses that are called at the hearing, you may direct them to the hearing adjudicator who will then ask the witness the question. The hearing adjudicator will allow you to present relevant evidence on your own behalf and it may be checked by the hearing adjudicator to verify its accuracy.

These are procedural expectations for both parties and Ombudsman investigations examine whether those legitimate expectations are met.

*Case summary: Maintenance Enforcement Program*

A debtor complained the Complaint Review Process of the **Maintenance Enforcement Program** (MEP) failed to conduct an adequate review of his concerns regarding discrepancies with his account in relation to the status of his children.

The Ombudsman's investigation identified administrative errors regarding the failure to input information relating to the status of the children into the database, the failure to act when requests for Child Status Reports went unanswered, and the acceptance of a Child Status Report that was not properly completed. The Ombudsman recommended that the complainant be provided with an explanation of his account specific to each child. The explanation should differentiate between the court-ordered amounts owed, arrears and any default penalties applied, and include an understandable chronology of adjustments made regarding end dates for the collection of maintenance. The recommendation was accepted and a clear letter of explanation was issued to the debtor.

*Case summary: ATB Financial*

An **ATB Financial** client complained ATB had unfairly denied any responsibility for charges incurred when he lost his bank card while travelling in the United States. ATB had investigated the circumstances and denied responsibility for the client's losses of over $4000.

The Ombudsman's investigation found ATB could not demonstrate that it had conducted a thorough investigation of the information provided by the client. It was discovered that the information provided by the client was destroyed after the initial decision was made to not compensate the client. A question also arose about whether ATB reacted properly when a computer alert system warned that the pattern of use on the card indicated it might have been compromised.

The Ombudsman recommended ATB reinvestigate the matter and that written policy be developed to formalize the process of managing alerts received about bank cards. The recommendations were accepted and upon re-investigation, the client was reimbursed over 75% of his losses.

*Case summary: Maintenance Enforcement Program*

A debtor complained the Complaint Review Process of the **Maintenance Enforcement Program** (MEP) failed to respond to his complaint that he had been denied a refund of maintenance arrears collected after he had filed for bankruptcy.

The Ombudsman's investigation found that MEP failed to initiate a payment arrangement to reduce the amount of maintenance arrears being collected, due to an administrative error. The Ombudsman recommended that MEP remind all staff of the importance of following policy and ensuring the correct amount of arrears is collected.

The investigation also found that the debtor's letter to the Complaint Review Process had been improperly filed rather than forwarded for processing. In addition, this investigation found that there were no standard operating procedures in place relating to the Complaint Review Process. The Ombudsman recommended that written procedures be developed for the Complaint Review Process and all staff with the responsibility for processing complaints be reminded of the importance of ensuring correspondence is appropriately directed for response in a timely manner.

As a result of a number of investigations, the unit managing the Complaint Review Process was re-organized and its reporting relationship changed with the goal of strengthening the focus on client complaints.

*Case summary: Alberta Children and Youth Services*

A parent complained he was not advised of the address of the nearest Legal Aid Society of Alberta office when his child was apprehended. At that time, a two page Notice of Apprehension form was in use which provided information to parents at the time of an apprehension. The first page of the form intended for the parent included a section for the caseworker to write in the address and telephone number of the nearest Legal Aid Society of Alberta office. The second page, intended for the child's file being maintained by the department, did not include this section. As a result, the Notice of Apprehension form on file did not document that the parent had been advised of the address of the nearest Legal Aid Society of Alberta office as required by the *Child, Youth and Family Enhancement Act*. The Ombudsman recommended the form be standardized to ensure that the form held on file has the same information as the form provided to the parent. That recommendation was accepted and the form has now been revised to include the contact information for all the Legal Aid Society of Alberta offices.

*Case summary: Maintenance Enforcement Program*

A creditor complained the **Maintenance Enforcement Program** (MEP) had improperly re-directed maintenance payments to the government of Alberta for a period of time when she was in receipt of income support benefits. She also complained that MEP staff failed to return her telephone calls.

The Ombudsman's investigation found that the Complaint Review Process had resulted in a clear explanation of the policy and procedure governing income support and the government's right to receive subrogated maintenance payments. The creditor had also been provided a written apology from the Executive Director for the delays in responding to her telephone calls.

However, a further review of the maintenance account was conducted as a result of this investigation by the Ombudsman. As a result of that review, it was determined certain funds had been improperly directed to the government. MEP advised the creditor in writing that those funds were being deposited into her account and she confirmed receipt. The Ombudsman found that while the MEP remitted the funds to the creditor, there was no acknowledgement to the creditor of the errors or omissions in the previous calculation, nor was an explanation for the adjustment provided to the creditor. The Ombudsman recommended the creditor be provided a full written explanation for the re-calculation of her account. The Ombudsman also commented that the calculation error should have been discovered in the original Complaint Review Process review.

## 7. DISCRETIONARY POWERS

Although decision-makers enjoy considerable deference which allows them to make their own decisions and determine the scope of their jurisdiction, discretion must still be exercised within a reasonable interpretation of legislation. We examine how the statute, regulation or policy establishes discretion. We review or question discretionary decisions on limited grounds such as evidence of bad faith, discretion used for an improper purpose or the use of irrelevant considerations. There may be more than one way to decide a matter, but whatever the decision, it must be made properly.

It is important to ensure the discretion is not incongruent with the power established in legislation and the person making the decision has the proper authority to exercise discretion. When exercising discretionary decision-making powers, the decision-maker must proceed only under his own legislation, must make a decision and must undertake only what he or she is authorized to carry out.

In many statutes governing department actions, senior executives or an appeal panel may exercise discretionary power. The Ombudsman will comment when he finds errors occurred or when an inappropriate interpretation or use of the delegated discretionary power is identified.

*Case summary: Alberta Children and Youth Services*

A father raised a number of concerns culminating in his complaint that his request for a change of caseworker had been unfairly denied by the Child and Family Services Authority in **Alberta Children and Youth Services**. The Ombudsman's investigation found that no formal request had been made for a change of caseworker and this issue of the complaint could not be supported.

The investigation also determined that the courts had ordered that the father's access to the children was at the discretion of the department. There were three separate requests for reviews of the decision to suspend access and only one of the three actually was referred to the administrative review process. The investigation confirmed the policy governing the administrative review process did not provide sufficient information for staff to understand when discretionary access orders can be referred through the administrative review process. The department accepted the Ombudsman's recommendation to clarify the policy governing this process.

## 8. WAS THE DECISION REASONABLE?

A reasonable decision should indicate how the decision-maker considered and assessed arguments. To determine a decision's reasonableness, it is important to relate how the evidence was weighed and give reasons about how the decision-maker considered and assessed the arguments and evidence. A reasonable decision is made within the statutory mandate and is grounded in the evidence presented.

The Ombudsman is not a substitute decision-maker; rather, he assesses the reasonableness of decisions based on available evidence. When the Ombudsman concludes a decision was reasonable, he is not making a determination whether the decision was right or wrong or whether a different decision was possible. If the decision is not reasonably based on arguments and evidence presented and accepted by the decision-maker, the Ombudsman may find the decision unreasonable. In the majority of cases, decisions are not found to be unreasonable although there may be administratively unfair components of the decision. In this reporting year, there were no cases of note where the Ombudsman made this finding.

## ALTERNATIVE COMPLAINT RESOLUTION

The Alberta Ombudsman established an Alternative Complaint Resolution (ACR) process in 2005 for the quick resolution of matters that would otherwise be assigned for formal investigation.

As in previous years, almost half the ACR issues involved complaints from inmates in correctional centres. For the reporting year April 2009 through March 2010, 20 of the 41 ACR issues addressed were complaints from inmates. The following cases illustrate the suitability of ACR to address certain issues in the correctional system.

*Case summary: Alberta Solicitor General and Public Security*

An inmate complained about not receiving funds from a cashed paycheque that had been held in property at the **correctional centre** where he was incarcerated. An Ombudsman investigator spoke with senior management and following those discussions, the correctional centre issued the money to the inmate who had since been released.

Many complaints are the result of inadequate communication.

*Case summary: Alberta Solicitor General and Public Security*

An inmate complained that his request to the **correctional centre** director was unfairly denied by a deputy director. This inmate had requested a minimum security rating and transfer to another correctional centre. An Ombudsman investigator spoke with the director who agreed to resolve this inmate's complaint by providing him with a new response to his request.

*Case summary: Alberta Solicitor General and Public Security*

An inmate complained of pain and breathing problems for the past two months and that request forms to the **correctional centre** director and the health care unit were being ignored. After discussions with the inmate and the director, it was determined that numerous request forms had been submitted by the inmate on similar issues. An agreement was reached that the inmate would submit a new request form to the director. Shortly after that, an appointment with the correctional centre doctor was scheduled.

There were also communication problems in other areas of government.

*Case summary: ATB Financial*

A customer complained he had sent correspondence twice to **ATB Financial** but had not received a response to either letter. An Ombudsman investigator contacted the Manager Service Excellence. The Manager was aware of the complainant's concerns and agreed to review the issues and provide a written decision to the complainant.

*Case summary: Alberta Children and Youth Services*

A parent complained calls to the **district office** manager to raise concerns about the caseworker had not been returned. As a result of the contact by the Ombudsman investigator, the manager agreed to meet with the complainant to discuss the concerns.

*Case summary: Alberta Employment and Immigration*

An individual complained of a delay in receiving a response from a **district office** supervisor regarding a decision to deny income support assistance to cover the costs of utilities which were about to be disconnected. As a result of the contact by the Ombudsman investigator, the supervisor arranged an appointment for the complainant to apply for supplementary financial benefits.

The value of ACR is demonstrated in the following cases.

*Case summary: Workers' Compensation Board*

A worker complained he did not receive a response from the **Workers' Compensation Board** (WCB) regarding an injury claim he had submitted two months earlier nor did he receive a response to his request for an update on the status of his claim. As a result of the contact by the Ombudsman investigator, the worker's missing claim and his letter were located. The WCB made arrangements to contact the worker and commence the processing of the claim.

*Case summary: Alberta Advanced Education and Technology, Alberta Student Loans*

A student complained he had not received a decision from **Alberta Student Loans** on a loan application he had submitted two months earlier. As a result of the contact by the Ombudsman investigator, the student loan application was processed within two days and a decision letter denying the application was issued to the student. The student subsequently complained of a lack of direct response from the program area. The Ombudsman investigator contacted the program area and arrangements were made for staff from that area to contact the student directly to explain the decision that had been made and the steps required to re-apply for the student loan.

## INFORMAL RESOLUTION

Another process designed for timely resolution is the Informal Resolution (IR) process. IR is attempted with oral inquiries where the intake officer believes a caller's issues can be resolved through assistance from our Office. The intent is not to advocate for the position of the caller but to assist in communication to arrive at a timely resolution.

*Case summary: Alberta Solicitor General and Public Security*

An inmate complained he was being held in custody unfairly. The courts had agreed to give him time to pay fines on his other charges and he felt he should be released rather than held in a **remand centre** on the one outstanding charge of smoking on the public transit system which was not scheduled to be dealt with by the courts for another three and a half months. Our intake officer spoke to the acting director who did not

believe the justice system intended to keep an individual in jail for another three months on that charge and agreed to investigate the matter. The acting director spoke with the crown prosecutor who indicated the charge will be taken to the courts within the week to be dealt with.

*Case summary: Maintenance Enforcement Program*

A debtor was advised by the **Maintenance Enforcement Program** (MEP) that he had satisfied the arrears and that it would take eight weeks for the garnishee on his employment insurance benefits to be removed. Our intake officer spoke with senior management at MEP who contacted the employment insurance program and made arrangements to have the garnishee lifted immediately with the result that garnisheed funds were deposited into the debtor's bank account the same day.

*Case summary: Workers' Compensation Board*

A worker was advised by his bank that there had been no deposit from the **Workers' Compensation Board** (WCB) and there were insufficient funds in his bank account to cover his mortgage payment. He contacted the WCB and was advised his former case manager no longer worked there and no new case manager had been assigned. Our intake officer spoke with the WCB and learned the former case manager had failed to authorize the bi-weekly compensation payment before his departure, that a new case manager had just been assigned to the claim and the compensation payment had been authorized and should be in the worker's bank account by the next day. The new case manager called the worker to explain what had occurred and apologized for the oversight.

*Case summary: Alberta Justice and Attorney General*

An individual received a speeding ticket which he paid by cheque through the mail. The cheque was returned by **traffic court administration** with a notice advising him the charge was withdrawn. Later in the month he received another letter advising him he had been convicted and assessed an additional late penalty of $24. Our intake officer spoke with a traffic court manager who arranged to have the matter reviewed. A court administrator confirmed the charge was quashed and there were no convictions assessed or penalties owing.

## IN CONCLUSION

The Alberta Ombudsman continues to work with authorities to improve the administrative fairness of their processes. Their cooperation and willingness to rectify administrative unfairness found in Ombudsman investigations illustrates their commitment to the administratively fair delivery of services, programs and decision-making processes to Albertans.

# OWN MOTION INVESTIGATION

## OWN MOTION INVESTIGATION UPDATE

On May 26, 2009, the Ombudsman released his report *Prescription for Fairness* in which he made 53 recommendations for changes to Alberta's Out-of-Country Health Services program. The goal of the recommendations was to improve the quality and fairness of decisions by:

- improving communication with applicants and appellants—preceding, during and following the decisions on their requests;
- improving the accountability and transparency of the Out-of-Country Health Services Committee, the Out-of-Country Health Services Appeal Panel and the Department of Health and Wellness; and
- improving training for the review bodies.

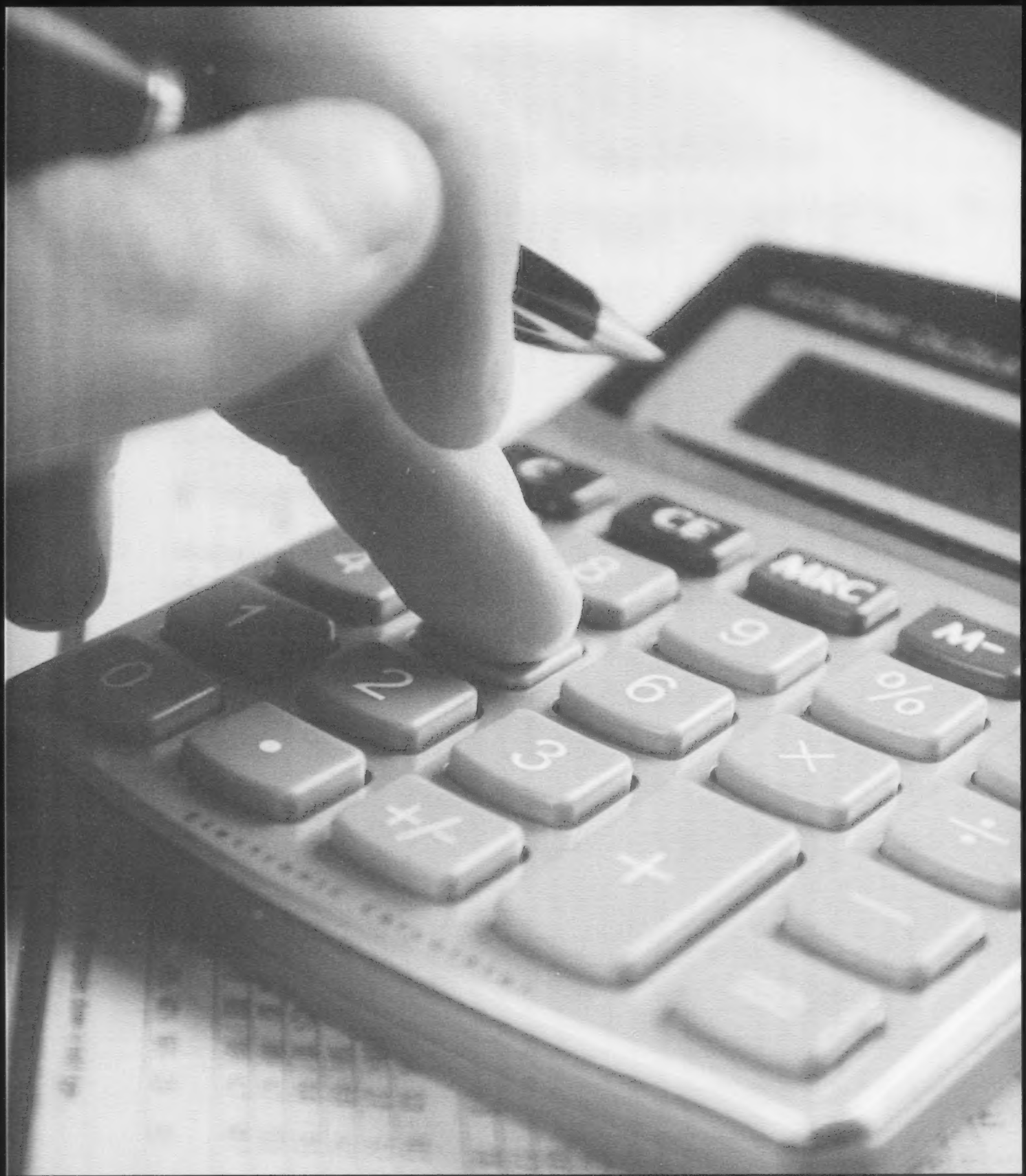
Significant recommendations included:

- after a hearing has taken place, applicants should receive complete disclosure of the decision — including the findings of fact and how the evidence was weighed in the hearing;
- the *Out-of-Country Health Services Regulation* should be changed so that physicians and dentists would complete and submit applications for funding on behalf of Albertans, with supporting documentation from specialists; and
- the Appeal Panel should re-hear four cases because of issues of administrative unfairness identified during individual investigations.

All of the recommendations were accepted by the Committee, the Appeal Panel and the Department of Health and Wellness. All the recommendations have been implemented except two recommendations which require amendments to the *Out-of-Country Health Services Regulation*. The regulatory change process is a lengthy process and the Ombudsman has received assurances that the changes to the *Out-of-Country Health Services Regulation* will occur in the fall of 2010.

The Ombudsman has also been advised by the Appeal Panel that the four cases have been re-heard. The Ombudsman has yet to be provided with copies of the written decisions on those four cases by the Appeal Panel and has been unable to determine whether the new decisions meet his recommendations regarding administratively fair decision-making and decision writing.

The *Prescription for Fairness* report can be viewed at www.ombudsman.ab.ca by clicking on "What's New."



# FINANCIAL STATEMENTS

# FINANCIAL STATEMENTS

**As at March 31, 2010**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AUDITOR GENERAL *Alberta*

## Auditor's Report

To the Members of the Legislative Assembly

I have audited the statements of financial position of the Office of the Ombudsman as at March 31, 2010 and 2009 and the statements of operations and cash flows for the years then ended. These financial statements are the responsibility of the Office's management. My responsibility is to express an opinion on these financial statements based on my audits.

I conducted my audits in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office as at March 31, 2010 and 2009 and the results of its operations and its cash flows for the years then ended in accordance with Canadian generally accepted accounting principles.

[Original signed by Merwan N. Saher]
CA
Auditor General

Edmonton, Alberta
June 23, 2010

# STATEMENTS OF OPERATIONS
YEAR ENDED MARCH 31

| | 2010 Budget | 2010 Actual | 2009 Actual |
|---|---|---|---|
| Revenues | | | |
| Other Revenue: | $ - | $ 504 | $ - |
| | - | 504 | - |
| Expenses | | | |
| Voted: | | | |
| Salaries, Wages and Employee Benefits | 2,509,000 | 2,327,150 | 2,266,941 |
| Supplies and Services *(Note 2)* | 402,000 | 417,732 | 457,276 |
| | $ 2,911,000 | 2,744,882 | 2,724,217 |
| Non Budgetary | | | |
| Valuation Adjustment | | | |
| Provision for (Decrease in) Vacation Pay | - | (20,550) | 18,041 |
| | - | (20,550) | 18,041 |
| Net Operating Results | $ (2,911,000) | $ (2,723,828) | $ (2,742,258) |

The accompanying notes and schedules are part of these financial statements.

# STATEMENTS OF FINANCIAL POSITION
AS AT MARCH 31

| | 2010 | 2009 |
|---|---|---|
| **ASSETS** | | |
| Cash | $ 400 | $ 400 |
| Accounts Receivable | 1,095 | - |
| Advances | 6,300 | 5,800 |
| Tangible Capital Assets *(Note 3)* | 14,368 | 29,346 |
| | $ 22,163 | $ 35,546 |
| **LIABILITIES** | | |
| Accounts Payable and Accrued Liabilities | $ 112,394 | $ 120,969 |
| Accrued Vacation Pay | 215,015 | 235,565 |
| | 327,409 | 356,534 |
| **NET LIABILITIES** | | |
| Net Liabilities at Beginning of Year | (320,988) | (277,341) |
| Net Operating Results | (2,723,828) | (2,742,258) |
| Net Transfer from General Revenues | 2,739,570 | 2,698,611 |
| Net Liabilities at End of Year | (305,246) | (320,988) |
| | $ 22,163 | $ 35,546 |

The accompanying notes and schedules are part of these financial statements.

# STATEMENTS OF CASH FLOWS
YEAR ENDED MARCH 31

| | 2010 | 2009 |
|---|---|---|
| Operating Transactions | | |
| Net Operating Results | $ (2,723,828) | $ (2,742,258) |
| Non-cash items included in Net Operating Results | | |
| Amortization of Tangible Capital Assets | 14,978 | 14,979 |
| | (2,708,850) | (2,727,279) |
| (Increase) in Accounts Receivable | (1,095) | - |
| (Increase) in Advances | (500) | - |
| (Decrease)/Increase in Accounts Payable and Accrued Liabilities | (8,575) | 10,627 |
| (Decrease)/Increase in Accrued Vacation Pay | (20,550) | 18,041 |
| Cash Applied to Operating Transactions | (2,739,570) | (2,698,611) |
| Financing Transactions | | |
| Net Transfer from General Revenues | 2,739,570 | 2,698,611 |
| Increase in Cash | - | - |
| Cash, Beginning of Year | 400 | 400 |
| Cash, End of Year | $ 400 | $ 400 |

The accompanying notes and schedules are part of these financial statements.

# NOTES TO THE FINANCIAL STATEMENTS
YEAR ENDED MARCH 31, 2010

## NOTE 1 - AUTHORITY AND PURPOSE

The Alberta Ombudsman is an officer of the Legislature who operates under the authority of the *Ombudsman Act*. The net cost of the operations of the Office of the Ombudsman (the Office) is borne by the General Revenue Fund of the Province of Alberta. Annual operating budgets are approved by the Standing Committee on Legislative Offices.

The Office promotes fairness in public administration within the Government of Alberta, designated professional organizations and the patient concerns resolution process of Alberta Health Services.

## NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES AND REPORTING PRACTICES

These financial statements are prepared in accordance with Canadian generally accepted accounting principles for the public sector as recommended by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants.

### a) Reporting Entity

The reporting entity is the Office of the Ombudsman which is a legislative office, for which the Alberta Ombudsman is responsible.

The Office operates within the General Revenue Fund. The Fund is administrated by the Minister of Finance and Enterprise. All cash receipts of the Office are deposited into the Fund and all cash disbursements made by the Office are paid from the Fund. Net transfer from General Revenues is the difference between all cash receipts and all cash disbursements made.

### b) Basis of Financial Reporting

***Revenues***

All revenues are reported on the accrual basis of accounting. Cash received for which goods or services have not been provided by year end is recorded as unearned revenue.

***Expenses***

Expenses represent the costs of resources consumed during the year on the Office's operations.

Pension costs included in these statements comprise the cost of employer contributions for current service of employees during the year.

Certain expenses, primarily for office space, incurred on behalf of the Office by government departments are not reflected in the Statement of Operations but are disclosed in Schedule 2.

***Valuation Adjustments***

Valuation adjustments represent the change in management's estimate of future payments arising from obligations relating to vacation pay.

***Assets***

Tangible capital assets are recorded at historical cost and amortized on a straight-line basis over the estimated useful lives of the assets as follows:

| | |
|---|---|
| Computer hardware and software | 3 years |
| Furniture and other office equipment | 10 years |

Assets are capitalized if their useful life is expected to be longer than 1 year and purchase price is $5,000 or greater.

***Amortization of Capital Assets***

A full year of amortization is taken in the year of acquisition.

***Net Liabilities***

Net liabilities represent the difference between the carrying value of the assets of the Office and its liabilities.

***Valuation of Financial Assets and Liabilities***

Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

The fair values of cash, accounts receivable, advances, and accounts payable and accrued liabilities are estimated to approximate their carrying values because of the short term nature of these instruments.

## NOTE 3 - TANGIBLE CAPITAL ASSETS

| | 2010 | | | 2009 |
|---|---|---|---|---|
| | Cost | Accumulated Amortization | Net Book Value | Net Book Value |
| Computer hardware and software | $ 41,945 | $ 41,945 | $ - | $ 11,640 |
| Furniture and other office equipment | 33,387 | 19,019 | 14,368 | 17,706 |
| | $ 75,332 | $ 60,964 | $ 14,368 | $ 29,346 |

## NOTE 4 - LEASE OBLIGATIONS OR COMMITMENTS

The Office leases certain equipment under operating leases that expire on various dates to 2012. The aggregate amounts payable for the unexpired terms of these contractual obligations are as follows:

| | |
|---|---|
| 2011 | $ 1,447 |
| 2012 | 215 |
| Total | $ 1,662 |

**NOTE 5 - DEFINED BENEFIT PLAN**

The Office participates in the multi-employer Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of $212,000 for the year ended March 31, 2010 (2009 – $165,000).

At December 31, 2009, the Management Employees Pension Plan reported a deficiency of $483,199,000 (2008 deficiency $568,574,000) and the Public Service Pension Plan reported a deficiency of $1,729,196,000 (2008 deficiency $1,187,538,000). At December 31, 2009 the Supplementary Retirement Plan for Public Service Managers had a deficiency of $39,516,000 (2008 deficiency $7,111,000).

The Office also participates in the multi-employer Long Term Disability Income Continuance Plan. At March 31, 2010, the Management, Opted Out and Excluded Plan had an actuarial surplus of $7,431,000 (2009 deficiency $1,051,000). The expense for this plan is limited to the employer's annual contributions for the year.

**NOTE 6 - APPROVAL OF FINANCIAL STATEMENTS**

These financial statements were approved by the Senior Financial Officer and the Ombudsman.

# SCHEDULE 1: SALARY AND BENEFITS DISCLOSURE
YEAR ENDED MARCH 31

| | 2010 | | | | 2009 |
|---|---|---|---|---|---|
| | Base Salary[1] | Other Cash Benefits[2] | Other Non-Cash Benefits[3] | Total | Total |
| Senior officials | | | | | |
| Ombudsman[4] | $ 227,192 | $ 6,236 | $ 54,576 | $ 288,004 | $ 282,439 |
| Deputy Ombudsman | $ 142,491 | $ - | $ 38,362 | $ 180,853 | $ 180,145 |

(1) *Base salary includes regular base pay.*

(2) *Other cash benefits include a lump sum payment awarded for attaining a minimum of five years service as of April 1, 2009.*

(3) *Other non-cash benefits include the employer's share of all employee benefits and contributions or payments made on behalf of employees including pension, health care, dental coverage, group life insurance, short and long-term disability plans, professional memberships and tuition fees.*

(4) *Automobile provided, no dollar amount included in other non-cash benefits.*

# SCHEDULE 2: ALLOCATED COSTS
## YEAR ENDED MARCH 31

| | 2010 | | | | 2009 |
|---|---|---|---|---|---|
| | | Expenses Incurred by Others | Valuation Adjustments[3] | | |
| Program | Expenses[1] | Accommodation Costs[2] | Vacation Pay | Total Expenses | Total Expenses |
| Operations | $ 2,744,882 | $ 259,763 | $ (20,550) | $ 2,984,095 | $ 3,042,481 |

(1) *Expenses - Directly Incurred as per Statement of Operations, excluding valuation adjustments.*

(2) *Costs shown for Accommodation, allocated by square footage.*

(3) *Valuation Adjustments as per Statement of Operations.*

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Throughout Alberta call toll free 310-0000 and dial either Office

Email (for general information): info@ombudsman.ab.ca

Online complaint form available on the website: www.ombudsman.ab.ca

## CONTACTS

ALBERTA OMBUDSMAN 2009/2010 ANNUAL REPORT

*Focused on Fairness*